

The Director of Central Intelligence

Washington, D.C. 20505

Honorable Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Committee on the Judiciary recently reported S. 1630, the Criminal Code Reform Act of 1981, recommending favorable Senate action. I share the view of the Committee and the Administration that the nation needs a comprehensive revision of the federal criminal code, but I am concerned that the provisions of S. 1630 appear to have been developed without sufficient consideration of their effect on the ability of the Intelligence Community to carry out its mission.

I am sure that the Committee on the Judiciary intended no detriment to the conduct of legitimate foreign intelligence activities, but the provisions of S. 1630 do not clearly reflect that intention. The lack of a definitive statement on the relationship between the proposed criminal code and the conduct of intelligence activities, combined with the proposed code's expansion of extraterritorial federal criminal jurisdiction, gives rise to uncertainties which could seriously impair our intelligence efforts. Moreover, under S. 1630 as reported by the Committee, an intelligence officer engaged in legitimate intelligence activities would be able to rely only on prosecutorial discretion and on the common law defense of exercise of public authority to shield him from criminal liability. Our nation's intelligence officers should not be put in such a position.

Sections 201(b)(1)(B) and 204(i) of S. 1630 establish, for the first time in federal criminal law, general extraterritorial jurisdiction over the conduct of nonmilitary federal public servants outside the United States for the purpose of performing official duties. Offenses defined with domestic circumstances in mind may therefore apply in vastly different circumstances to the activities of public servants abroad. For example, the offenses of Theft (section 1731), Trafficking in Stolen Property (section 1732), Receiving Stolen Property (section 1733), and Executing a Fraudulent Scheme (section 1734), when combined with the new general extraterritorial jurisdiction provision, could be construed to prohibit federal public servants abroad engaged

TAB

in the collection of foreign intelligence from clandestinely acquiring foreign documentary materials or other property of foreign intelligence value. Similar problems arise with respect to the relationship of other sections of the Bill to the new general extraterritorial jurisdiction over the conduct of federal public servants. I should also note that provisions of the proposed criminal code could be misconstrued to apply in those limited circumstances in which foreign intelligence activities are properly conducted in the United States.

Comprehensive revision of the criminal code provides the opportunity for an explicit statement that the conduct of legitimate intelligence activities does not give rise to criminal liability, and that the Congress does not intend enactment of the new code to require agencies of the Intelligence Community to apply American criminal law standards throughout the world in the collection of foreign intelligence. I strongly recommend, therefore, that S. 1630 be amended by adding at the end of the Bill the following new section:

"PART KK--EFFECT ON INTELLIGENCE ACTIVITIES

SEC. 731. Nothing in title 18, United States Code, or any other federal criminal statute shall be construed to create criminal liability for the conduct of intelligence activities by a federal public servant that are authorized and conducted in accordance with the Constitution and applicable federal statutes, Executive orders, presidential directives, and departmental or agency regulations, which regulate the conduct of intelligence activities."

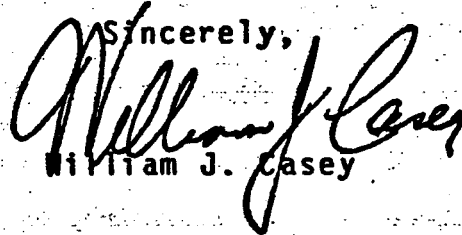
I would emphasize that this provision would protect intelligence officers whose activities are both authorized and conducted in accordance with the Constitution and the well developed, detailed body of statutes, Executive Orders, and implementing procedures regulating the conduct of intelligence activities. The provision would not protect an intelligence officer engaged in an improper intelligence activity, nor would the provision itself authorize any intelligence activity.

In addition to proposed section 731 which will assure harmony between the criminal code and federal law governing the conduct of intelligence activities, several other amendments to S. 1630 are needed to protect federal interests related to intelligence activities. Section 1205 of the Bill provides only partial protection against unauthorized disclosure of diplomatic codes and communications, and several sections of the Bill which protect certain federal public servants and foreign visitors from violent crime fail to protect intelligence personnel. I have enclosed proposed amendments to strengthen these sections.

I believe that one final, and crucial, modification of S. 1630 should be made. The Bill should provide more effective criminal sanctions against espionage and unauthorized disclosure of intelligence information. My staff is studying this issue thoroughly, and I will be forwarding my recommendations on this matter to you separately.

I appreciate very much the opportunity to express my views on this important legislation. I look forward to enactment of a comprehensive federal criminal code which will comport with the nation's need for an effective Intelligence Community.

Sincerely,



William J. Casey

Enclosures